Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION

NCTA – The Internet & Television Association (NCTA) opposes proposals in the Commission's notice of proposed rulemaking that would increase funding for programs available exclusively to rate-of-return incumbent local exchange carriers (LECs).[1] The Commission must ensure that any changes to the high-cost support program are made in a fiscally responsible manner, keeping in mind the burden on consumers whose payments support the fund. To that end, the Commission should move forward with programs that more efficiently award support through competitive bidding. To the extent the Commission expands any of the programs available solely to incumbent providers, an equal amount of reductions should be made elsewhere to this incumbent LEC-only support. Furthermore, the Commission should establish an auction process to allow non-incumbent providers to compete with incumbent LECs to provide broadband in rural areas and should take steps to target support only to areas where it is needed.

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[1] *Connect America Fund*, WC Docket Nos. 10-90, 14-58, 07-135, CC Docket No. 01-92, Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 18-29 (Mar. 23, 2018) (*NPRM*).

I. CHANGES TO HIGH-COST SUPPORT PROGRAMS TO ENCOURAGE RURAL BROADBAND DEPLOYMENT MUST PROMOTE EFFICIENT USE OF UNIVERSAL SERVICE RESOURCES

The Commission indicates that its aim in this proceeding is to establish a program "that will allow for robust broadband deployment in rate-of-return areas while minimizing the burden that contributions to the Universal Service Fund . . . place on ratepayers and . . . bring[ing] greater certainty and stability to rate-of-return high-cost funding."[2] Unfortunately, the proposals in the item do not accomplish that goal because they perpetuate programs available only to one class of providers to the exclusion of all others, in direct contravention of prior Commission decisions. When the Commission created the Connect America Fund (CAF) to support broadband deployment through universal service support in 2011, it stated, "the Connect America Fund . . . will ultimately *replace all existing high-cost support mechanisms*" and "will rely on incentive-based, market-driven policies, including competitive bidding, to distribute universal service funds as efficiently and effectively as possible."[3] Since that decision, the Commission has used competitive bidding to distribute hundreds of millions of dollars in support and just this month it announced that almost 300 companies have applied to participate in the CAF Phase II auction process later this year.[4]

Given the demonstrated success of the Commission's policy decision to rely on competitive bidding as the most efficient way to distribute support, it is inexplicable that the Commission is now seeking comment on potentially increasing the amount of support given exclusively to a limited subset of providers, without regard to the fact that other providers may be able to offer broadband to rural consumers more efficiently and affordably in these areas. The

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2 *Id.* at ¶ 6.

3 *Connect America Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17673, ¶ 20 (2011) (*CAF Order*) (emphasis added).

4 *Connect America Fund Phase II Auction Status of Short-Form Applications to Participate In Auction 903*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, DA 18-484 (WTB-WCB, May 14, 2018).

Commission should decline to increase support allocated in this inefficient manner beyond current levels.

Instead, the Commission should approach the various proposals under consideration with a presumption that any changes to the current rate-of-return carrier support programs should not lead to a net increase in the amount of this support available only to an exclusive set of providers. If the Commission decides to increase the amount of support distributed in order to accelerate efforts to bring broadband to unserved areas, it should distribute that support only through mechanisms that rely on competitive bidding. The Commission should reject outright any proposals that would require the agency to "collect additional contributions to fully fund all [support] electors at this point."[5]

The Commission also must consider its other proposals holistically to ensure that the dual goals of increasing funding and enhancing the efficient operation of the high-cost program are advanced in *equal* measure. For example, the Commission seeks comment on increasing the funding cap from $146.10 to $200 per location for Alternative Connect America Cost Model (A-CAM) incumbent LEC participants.[6] Unless this type of proposal can be accomplished using "additional headroom in the budget,"[7] it must be offset by an adequate concomitant reduction in support to rate-of-return LECs.

To that end, the Commission should adopt its proposed reductions in rate-of-return LEC support. For example, the Commission seeks comment on reducing the monthly per-line limit for rate-of-return carriers from $250 to $225 or $200.[8] This step, while appropriate, would fall

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[5] *NPRM*, FCC 18-29, ¶ 145.

[6] *Id.* at ¶¶ 142-43.

[7] *Id.* at ¶ 143.

[8] *Id.* at ¶¶ 158-59.

well short of offsetting the $66.6 million increase in A-CAM support that would result from "fully funding" A-CAM recipients.[9]

II. THE COMMISSION SHOULD TARGET SUPPORT ONLY TO AREAS WHERE IT IS NEEDED

To further enhance the efficiency of the high-cost program, the Commission should adopt limited measures designed to ensure that support is allocated only to those areas where it is truly needed. As one step, the Commission should replace the current, cumbersome "100% overlap process" with an auction mechanism in which both incumbents and non-incumbents can participate.[10] As the Commission observes, the overlap approach has garnered limited participation by non-incumbents serving rate-of-return study areas.[11] As a result, rate-of-return carriers are continuing to receive support in areas that are significantly served by other providers that receive no high-cost support. Continuing this approach is both inefficient and wasteful of limited universal service funds. Instead, the Commission should conduct auctions for support in these areas. An auction mechanism would provide an administratively simpler way for non-incumbents to compete to receive the high-cost support that currently is reserved exclusively for incumbents. It would also allow auction participants to seek only the amount of funding necessary to serve high-cost and unserved areas, rather than allowing a rate-of-return LEC to receive excessive support for the entire area. The Commission should introduce the auction approach in any study area in which any combination of non-incumbents serve 50 percent or more of the locations.

In addition, if the Commission offers additional cost model-based support to rate-of-return LECs, the Commission should adopt its proposal to rely on FCC Form 477 data to identify

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9 *Id.* at ¶ 143; *see also Direct Communs. Cedar Valley, LLC v. FCC*, 753 F.3d 1015, 1060 (10th Cir. 2014) ("the FCC quite clearly rejected any notion that budgetary 'sufficiency' is equivalent to 'complete' or 'full' funding for carrying out the broadband and other obligations imposed upon carriers who are voluntary recipients of USF funds").

10 *NPRM*, FCC 18-29, ¶¶ 160-63.

11 *Id.* at ¶ 161.

locations that are not served by broadband. The current version of the Form 477 has been in use for many years now and can provide a reliable source of availability data for this purpose, as long as the Commission gives parties the opportunity to submit updated information since the date of their last Form 477 filing. The use of Form 477 data provides a far more efficient and reliable measure of broadband penetration than the previous reliance on a "time-consuming and administratively burdensome challenge process."[12]

The Commission also should adopt its proposal to require recipients of any new funding offer to submit granular geocoded location information for all newly-served locations.[13] This will enable the Commission to accurately track where universal service funding has been spent, and to monitor the compliance of funding recipients with their commitments to deploy broadband.

CONCLUSION

As discussed above, the Commission should not increase the amount of universal service funding provided exclusively to rate-of-return incumbent LECs. The Commission should be taking steps to move away from this outdated and inefficient use of funding and instead should be creating opportunities for all capable broadband providers to bring service to unserved rural areas.

Respectfully submitted,

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12 *Id.* at ¶ 123.

13 *Id.* at ¶ 136.